

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

United States District Court  
Southern District of Texas  
FILED

BC

JUL 1 2004

Michael N. Milby, Clerk

IN RE ENRON CORPORATION  
SECURITIES, DERIVATIVE, &  
"ERISA" LITIGATION

§ MDL-1446  
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MARK NEWBY, et al.,

*Plaintiffs,*

v.

ENRON CORP., an Oregon  
Corporation, et al.,

*Defendants.*

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§ CIVIL ACTION NO: H-01-3624  
§ AND CONSOLIDATED CASES  
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**JOE H. FOY'S NOTICE OF LIMITED WITHDRAWAL OF  
MOTION TO COMPEL PRODUCTION OF SEC DEPOSITION TRANSCRIPTS  
(AS TO LEHMAN BROTHERS DEFENDANTS)**

**[This pleading concerns *Newby* Instrument No. 2217]**

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TO THE HONORABLE JUDGE OF THIS COURT:

On June 21, 2004, Outside Director Defendant Joe H. Foy filed a Motion to Compel Production of SEC Deposition Transcripts by several parties, including the Lehman Brothers Defendants.<sup>1</sup> *Newby* Instrument No. 2217. Subsequent to that filing, counsel for Lehman clarified their discovery responses, specifically stating that no Lehman employee provided testimony that was

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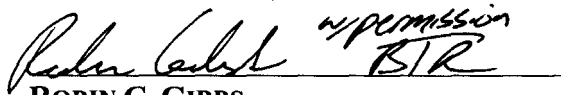
<sup>1</sup> Lehman Brothers Holdings Inc. and Lehman Brothers Inc.

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transcribed. *See* Ex. "A" hereto. In light of this further conference, and without waiver of any right to request any appropriate relief at a future date, Mr. Foy respectfully withdraws his Motion to Compel Production of Documents as to the Lehman Brothers Defendants. Attached as Ex. "B" hereto is an amended proposed order, which does not include any relief as to the Lehman Brothers Defendants.

Respectfully submitted,

**GIBBS & BRUNS, L.L.P.**

By:  <sup>with permission</sup>  
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**Attorneys for Defendant:**  
**JOE H. FOY**

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing has been served by sending a copy via posting to [www.ESL3624.com](http://www.ESL3624.com) on this the 1st day of July, 2004.

  
\_\_\_\_\_  
Brian T. Ross



## JONES DAY

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June 23, 2004

BY FACSIMILE

Michael K. Oldham, Esq.  
Gibbs & Bruns, LLP  
1100 Louisiana, Suite 5300  
Houston, Texas 77002

Re: In Re Enron Coropraton Securities Litigation

Dear Michael:

We have seen the posting on the esl website of Defendant Joe Foy's Motion to Compel Production of SEC Deposition Transcripts. Lehman should not be included in that motion.

As Lehman stated in its responses to Foy's First Interrogatory and Requests for Production, Lehman possesses no transcripts of examinations by the SEC of any of its employees. Only one Lehman employee, Richard Gross, was interviewed by the SEC, and there was no transcription of the interview. Apparently, Lehman's response was misunderstood to suggest that a transcript existed, but that Lehman was unwilling to procure it. I can assure you that is not the case.

In light of the foregoing, we would greatly appreciate the withdrawal of the Motion to Compel as to Lehman at your earliest convenience.

Sincerely,



Maria S.K. Bergman

cc: David L. Carden, Esq.  
Kathy D. Patrick, Esq.

NY1-2141820v1

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**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

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**IN RE ENRON CORPORATION  
SECURITIES, DERIVATIVE, &  
"ERISA" LITIGATION**

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**MDL-1446**

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**This Document Relates to:  
MARK NEWBY, ET AL.,  
PLAINTIFFS,**

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**CIVIL ACTION NO. H-01-3624  
AND CONSOLIDATED CASES**

**VS.**

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**ENRON CORPORATION, ET AL.,  
DEFENDANTS.**

**AMENDED ORDER ON MOTION TO COMPEL PRODUCTION  
OF SEC DEPOSITION TRANSCRIPTS**

On \_\_\_\_\_, 2004, the Court considered this Motion to Compel Production of SEC Deposition Transcripts, as well as any responsive briefing of the parties. The Court determines that this Motion should be **GRANTED**.

Accordingly, it is **ORDERED** that Respondents Arthur Andersen, LLP, Debra A. Cash, the "Citigroup" Defendants, Stephen D. Goddard, Michael M. Lowther, Kristina Mordaunt, Richard R. Petersen, and Vinson & Elkins, LLP do the following:

- (1) request their SEC transcripts (including those of their employees and agents) to the extent they have not already done so;
- (2) produce all responsive SEC transcripts, including those transcripts for SEC deponents identified in Respondents' respective answers to Mr. Foy's Interrogatory No. 1 to all parties; and
- (3) produce immediately upon receipt the transcripts themselves and/or any correspondence with the SEC evincing a delay or refusal on the part of the SEC to provide the transcript(s).

Signed this \_\_\_\_ day of \_\_\_\_\_, 2004.

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United States District Judge